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IN THE
COURT OF APPEALS OF INDIANA

DONALD MARLETT,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0605-CR-421
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Tanya Walton Pratt, Judge
Cause No. 49G01-0507-FA-117963

December 13, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Donald Marlett appeals from his convictions following a bench trial for two counts of Child Molesting, as Class C felonies. Marlett presents a single issue for review, namely, whether the evidence is sufficient to support his convictions.

We affirm.

FACTS AND PROCEDURAL HISTORY

On July 1, 2005, Kathryn Horne was at the home of Jerry Akers[1] to babysit Akers' four-year-old daughter, S.J., and some other children. Marlett, who is a cousin of Akers and who had recently met Akers for the first time at a family reunion, was also at the home. When Horne sent S.J. into the house for a "time-out," she saw Marlett follow. Shortly thereafter, Horne went to check on S.J. She found S.J. standing in her bedroom with her skirt up and her underwear down to her knees. Marlett was "on fours" in front of S.J., wiping his hands on his pant leg. Horne removed S.J. from the room and ordered Marlett to leave. When Akers returned home, Horne informed her that S.J. had been molested.

On July 9, 2005, Marlett was again visiting Akers' home. At one point, Akers went to the bathroom, leaving S.J. alone with Marlett. "[W]ithin seconds" S.J. ran into the bathroom crying and said that Marlett had touched her "down there," pointing to her "private area." Transcript at 29, 30. Akers told Marlett to leave, and then Akers took S.J. to the hospital. A medical examination of S.J. revealed mild erythema but an otherwise normal examination.

[1] At trial, Akers gave the name Jerry Akers Patton.

On the same day, an Indianapolis police officer from the Child Abuse Division interviewed Marlett. Marlett stated that when Horne was babysitting, he found S.J. alone in her room, with her underwear down, complaining of itching in her genital area. Marlett said that S.J. acquiesced when he offered to "get some medicine so [he could] put it on it." Exhibits at 8. He stated that he saw "a bunch of bumps all over her butt" so he retrieved Vaseline from the bathroom, put some on S.J.'s hand, and asked S.J. to rub herself. Id.

Marlett also stated that on July 9, the day of the interview, S.J. had complained that her genital area was sore. While S.J. was standing with her underwear down, Marlett inspected S.J.'s genital area and offered to put some Vaseline on her. He smelled his hand after applying the salve. When asked whether Marlett's finger had "gone between [S.J.'s genital] 'lips,'" he admitted that it "might have" and "might have touched the little click." Exhibit at 42.

The State charged Marlett with one count of child molesting, as a Class A felony and one count of child molesting, as a Class C felony and with being an habitual offender. The trial court found Marlett guilty but mentally ill of two counts of child molesting, as Class C felonies, and of being an habitual offender. The trial court sentenced him to four years on the first child molesting count, enhanced by six years for being an habitual offender, and four years on the second child molesting count. The sentences were ordered to be served concurrently for an aggregate sentence of ten years. Marlett appeals.

DISCUSSION AND DECISION

Marlett contends that the evidence is insufficient to support his convictions on two counts of child molesting, as Class C felonies. In particular, Marlett asserts that the evidence is insufficient to show that he had an intent to arouse when he touched S.J. We cannot agree.

When reviewing a sufficiency of the evidence claim, we neither reweigh the evidence nor judge the credibility of witnesses. Grim v. State, 797 N.E.2d 825, 830 (Ind. Ct. App. 2003). Rather, we consider only the evidence that is favorable to the judgment along with the reasonable inferences to be drawn therefrom to determine whether there was sufficient evidence of probative value to support a conviction. Id. We will affirm the conviction if there is substantial evidence of probative value from which a reasonable trier of fact could have drawn the conclusion that the defendant was guilty of the crime charged beyond a reasonable doubt. Id.

To prove the offense of child molesting, as a Class C felony, the State was required to show that Marlett "perform[ed] or submit[ted] to any fondling or touching of [S.J.], with intent to arouse or to satisfy the sexual desires of either [S.J.] or [Marlett.]" See Ind. Code § 35-42-4-3(b). Mere touching alone is not sufficient to constitute the crime of child molesting. Clark v. State, 695 N.E.2d 999, 1002 (Ind. Ct. App. 1998), trans. denied. The State must also prove beyond a reasonable doubt that the act of touching was accompanied by the specific intent to arouse or satisfy sexual desires. Id. The intent element of child molesting may be established by circumstantial evidence and

may be inferred from the actor's conduct and the natural and usual sequence to which such conduct usually points. Id. (citation omitted).

Marlett asserts that the State failed to show that he had the intent to arouse or to satisfy sexual desires when he touched S.J.'s external genitalia. Marlett admitted that he twice touched S.J.'s external genitalia while her underwear was down. At the time of the offenses, he was a sixty-year-old man and had only recently been introduced to his cousin Akers and S.J., who was only four years old. As noted above, intent may be inferred from Marlett's conduct and the natural and usual sequence to which such conduct usually points. See Clark, 695 N.E.2d at 1002. On the facts presented, the evidence was sufficient to show intent to arouse.

Marlett argues that he was merely trying to medicate the area after S.J. complained of itching or soreness there. But his argument that he has a non-incriminating explanation for touching S.J. is a request that we reweigh his credibility, which we cannot do. See Grim, 797 N.E.2d at 830. Thus, we conclude that the evidence is sufficient to support his convictions.

Affirmed.

MAY, J., and MATHIAS, J., concur.